

DWIGHT F. RITTER, ESQ. (STATE BAR #1230)
KAREN ALBENCE, ESQ. (STATE BAR #241719)
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Attorney for Plaintiff
CHARLES SMALL

FILED

09 APR 30 PM 12:09

CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BY:

DEPUTY

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

CHARLES SMALL,
Plaintiff,

v.

MATTHEW MARTEL, as an
individual, and as the
Warden from the California
Rehabilitation Center;
GUILLERMINA HALL MURRAY, as
an individual, and as the
Warden from the California
Rehabilitation Center;
SHERIFF WILLIAM KOLENDER, as
an individual, and on behalf
of THE GEORGE BAILEY
DETENTION FACILITY; BONNIE
DUMANIS, as an individual,
and DOES 1-50,

Defendants.

Case No.

'09 CV 913 JM POR

**COMPLAINT AND PLAINTIFF'S
DEMAND FOR JURY TRIAL FOR
PERSONAL INJURIES BASED ON:**

1. VIOLATION OF CIVIL RIGHTS
PURSUANT TO 42 U.S. CODE §1983
ET. SEQ.;
2. FALSE IMPRISONMENT;
3. NEGLIGENCE.

Comes now plaintiff, CHARLES SMALL, and for his causes of
action against defendants, and each of them, complains and
alleges as follows:

GENERAL ALLEGATIONS

1. All of the facts and circumstances alleged within this
complaint occurred within the State of California or under

COMPLAINT

1 circumstances such that the above-captioned District Court has
2 jurisdiction.

3 2. Plaintiff, CHARLES SMALL, at all times mentioned herein
4 was a resident of the State of California, and within the
5 jurisdiction of this court.

6 3. The true names and capacities, whether individual,
7 corporate, associate or otherwise of defendants, DOES 1-50,
8 inclusive, are unknown to plaintiff, who therefore sues said
9 defendants by such fictitious names.

10 4. Plaintiff is informed and believes and alleges that each
11 of the defendants designated as a DOE is responsible in some
12 manner for the alleged events and happenings that caused injuries
13 and damages to the plaintiff, and each of them.

14 5. Plaintiff is informed and believes and alleges that at
15 all times herein mentioned each of the defendants was the agent
16 and employee of each of the remaining defendants and was at all
17 mentioned times acting within the scope of such agency and
18 employment.

19 6. Plaintiff is informed and believes and alleges that each
20 fictitiously named defendant and each defendant sued or served as
21 a business entity or public entity was at all noted times herein
22 duly organized and licensed under one of the laws of the States
23 of the United States and the State of California and doing
24 business in the State of California as required for jurisdiction
25 of this Court.

26 7. At all mentioned times, defendants MATTHEW MARTEL,
27 GUILLERMINA HALL MURRAY, SHERIFF WILLIAM KOLENDER, and BONNIE
28 DUMANIS, and DOES 1-50 were and still are residents of the State

1 of California.

2 8. Defendant MATTHEW MARTEL is the Warden from California
3 Rehabilitation Center from March of 2008 to today's date,
4 GUILLERMINA HALL MURRAY was the Warden from California
5 Rehabilitation Center during 2007 and up to March of 2008,
6 SHERIFF WILLIAM KOLENDER was and still is the head of and in a
7 supervisory position at THE GEORGE BAILEY DETENTION CENTER, and
8 BONNIE DUMANIS was and is currently the District Attorney for
9 San Diego.

10 9. Defendant entities and DOES 1-50, and each of them,
11 were created and are existing by virtue of the laws of the State
12 of California and have their principal place of business in the
13 State of California. Said defendants are doing business in the
14 State of California and are therefore subject to the
15 jurisdiction of this court pursuant to California law and may be
16 served pursuant to law.

17 10. Plaintiff is informed and believe and allege that at
18 all mentioned times the events where the incidents occurred was
19 under the supervision, direction, control, of all named
20 defendants, and DOE defendants, and each of them, and that each
21 defendant was operating within the course and scope of their
22 employment within the State of California.

23 11. On or about February 5, 2007, plaintiff CHARLES SMALL,
24 who was detained at the California Rehabilitation Center, was to
25 be released by defendants on the following day of February 6,
26 2007 but was detained by defendants for an additional 45 days
27 longer for an evaluation. The petition for detainment occurred
28 while CHARLES SMALL was still in the custody of defendants. The

1 detainment ended on March 25, 2007, which is the date CHARLES
2 SMALL was to be released by defendants. However, the District
3 Attorney, defendant BONNIE DUMANIS, untimely and improperly filed
4 a petition on March 26, 2007, one day after SMALL could be
5 legally detained by defendants. CHARLES SMALL was still
6 improperly and unlawfully detained by defendants after March 25,
7 2007 and subsequently transferred and unconstitutionally
8 imprisoned at the George Bailey Detention Facility. CHARLES SMALL
9 was not released by defendants until March 10, 2008 and was thus
10 unconstitutionally imprisoned by the California Rehabilitation
11 Center and the George Bailey Detention Center for 349 days.

12
13 **FIRST CAUSE OF ACTION**

14 **(Violation of Civil Rights)**

15 12. Plaintiff realleges and incorporates by reference each
16 and every allegation contained in paragraphs 1 through 11,
17 above.

18 13. This cause of action arises under the United States
19 Constitution, particularly under the provisions of the Fourth,
20 Fifth, Eighth, and Fourteenth Amendments to the Constitution of
21 the United States, under federal law, particularly Title 42 of
22 the United States Code, Section 1983.

23 14. During all times mentioned in this complaint,
24 defendants MATTHEW MARTEL, as an individual, and as the Warden
25 from California Rehabilitation Center, GUILLERMINA HALL MURRAY,
26 as an individual, and as the Warden from California
27 Rehabilitation Center, SHERIFF WILLIAM KOLENDER, as an
28 individual and on behalf of THE GEORGE BAILEY DETENTION CENTER,

1 and BONNIE DUMANIS, as the District Attorney acting in her
2 individual and official capacities, and DOES 1-50, having
3 influence, power, and responsibilities for the California
4 Rehabilitation Center, the George Bailey Detention Center, and
5 the Office of the District Attorney. The true names of
6 defendants DOES 1 through 50 are presently unknown to plaintiff.
7 Plaintiff seeks leave of court to substitute names of other
8 defendants for DOE defendants when that knowledge becomes
9 available to plaintiff.

10 15. During all times mentioned in this complaint, the
11 defendants and DOES 1-50, inclusive, were acting under color of
12 law, namely the color of the State of California Constitution,
13 statutes, laws, rules, regulations, customs and uses.

14 16. During all times mentioned in this complaint, the
15 defendants and DOES 1-50, inclusive, and each of them,
16 separately and in concert engaged in acts and omissions which
17 constituted deprivation of the federal Constitutional rights,
18 privileges and immunities of the plaintiff, and while these acts
19 were carried out under color of law, they had no justification
20 or excuse in law.

21 17. Defendants and DOES 1-50, inclusive, and each of them,
22 at all times relevant to this action were empowered with the
23 obligation and the duty to not violate the law and the federal
24 rights of the plaintiff. Said defendants, and each of them,
25 with deliberate indifference, failed to perform that duty, and
26 thereby became a party to injury inflicted upon plaintiff.

27 18. Acting under color of law, the defendants, and DOES 1-
28 50, and each of them, acted by (1) improperly, unreasonably, and

1 falsely imprisoning a citizen who was acting in accordance with
2 his constitutional and statutory rights, privileges and
3 immunities; (2) conspiring to violate the rights, privileges and
4 immunities guaranteed to plaintiffs by the Constitution of the
5 United States; and (3) otherwise depriving plaintiff CHARLES
6 SMALL of his Constitutional rights. As a proximate result of
7 this knowing and deliberately indifferent conduct of defendants
8 and DOES 1-50, plaintiff's Constitutional rights were violated.

9 19. On January 24, 2008, the California Court of Appeals,
10 4th District, ruled that CHARLES SMALL was not lawfully being held
11 by the defendants, and DOES 1-50, and defendants failed to show
12 that their delay in filing the petition against CHARLES SMALL
13 resulted in good faith mistake of law or fact. CHARLES SMALL
14 lawfully should have been released on March 25, 2007, but
15 defendants, and DOES 1-50, instead unlawfully imprisoned CHARLES
16 SMALL until March 10, 2008. As a result of the said wrongful
17 conduct of the defendants, and DOES 1-50, specifically defendants
18 MATTHEW MARTEL, as an individual, and as the Warden from
19 California Rehabilitation Center, GUILLERMINA HALL MURRAY, as an
20 individual, and as the Warden from California Rehabilitation
21 Center, and defendant District Attorney BONNIE DUMANIS, and
22 defendant SHERIFF WILLIAM KOLENDER, and each of them, plaintiff
23 CHARLES SMALL was wrongfully detained and wrongfully imprisoned
24 for approximately 349 days.

25 20. In the manner described above, each of the defendants,
26 jointly and severally, in their official capacity and
27 individually, violated the rights of plaintiff CHARLES SMALL
28 secured by the Constitution of the United States to every

1 citizen to:

2 (a) Be secure in his person and effects against
3 unreasonable seizure under the Fourth and Fourteenth Amendments
4 to the United States Constitution;

5 (b) Not to be deprived of life, liberty or property
6 without due process of the law, and to not be denied the equal
7 protection of the law, secured by the Fifth and Fourteenth
8 Amendments to the United States Constitution; and

9 (c) Be free from cruel and unusual punishment secured by
10 the Eighth and Fourteenth Amendments to the Constitution of the
11 United States.

12 21. The acts, conduct and behavior of the defendants and
13 DOES 1-50, inclusive, were performed knowingly, willfully,
14 intentionally, oppressively, and maliciously with conscious
15 disregard of the rights and safety of plaintiff CHARLES SMALL by
16 reason of which plaintiff is entitled to an award of punitive
17 damages against defendants.

18
19 **SECOND CAUSE OF ACTION**

20 **(False Imprisonment)**

21 22. Plaintiff hereby incorporates by reference the
22 allegations contained in Paragraphs 1 through 21 of the First
23 Cause of Action as if fully plead here.

24 23. The true names and capacities, whether individual,
25 corporate, public, associate or otherwise of defendants, Does 1
26 through 50, inclusive, are unknown to plaintiff, and each of
27 them, who therefore sue said defendants by such fictitious names.
28 Plaintiff is informed and believes and alleges that each of the

1 defendants herein designated as a DOE is responsible in some
2 manner for the alleged events and happenings that caused injuries
3 and damages to the plaintiffs, and each of them.

4 24. On January 24, 2008, the California Court of Appeals,
5 4th District, ruled that CHARLES SMALL was not lawfully being held
6 by the defendants and DOES 1-50, and defendants failed to show
7 that their delay in filing the petition against CHARLES SMALL
8 resulted in good faith mistake of law or fact. CHARLES SMALL
9 lawfully should have been released on March 25, 2007, but
10 defendants and DOES 1-50, instead unlawfully imprisoned CHARLES
11 SMALL until March 10, 2008. As a result of the said wrongful
12 conduct of the defendants, and DOES 1-50, specifically defendants
13 MATTHEW MARTEL, as an individual, and as the Warden from
14 California Rehabilitation Center, GUILLERMINA HALL MURRAY, as an
15 individual, and as the Warden from California Rehabilitation
16 Center, and defendant District Attorney BONNIE DUMANIS, and
17 defendant SHERIFF WILLIAM KOLENDER, and each of them, plaintiff
18 CHARLES SMALL was wrongfully detained and wrongfully imprisoned
19 for approximately 349 days.

20 25. As a further result of the wrongful conduct of the
21 defendants, MATTHEW MARTEL, as an individual, and as the Warden
22 from California Rehabilitation Center, GUILLERMINA HALL MURRAY,
23 as an individual, and as the Warden from California
24 Rehabilitation Center, and DOES 1-50, and each of them,
25 plaintiff was prevented from continuing employment in the same
26 capacity from being wrongfully detained and wrongfully
27 imprisoned, which thus resulted in lost earnings and decreased
28 work performance in an economic amount which plaintiff will

1 present according to proof at trial.

2 **THIRD CAUSE OF ACTION**

3 **(Negligence)**

4 26. Plaintiff incorporates by reference each and every
5 allegation contained in paragraphs 1 through 25 as though fully
6 set forth herein.

7 27. Plaintiff believes and asserts that defendants,
8 MATTHEW MARTEL, as an individual, and as the Warden from
9 California Rehabilitation Center, GUILLERMINA HALL MURRAY, as an
10 individual, and as the Warden from California Rehabilitation
11 Center including DOES 1-50, had a duty to act in a reasonable
12 manner and not wrongfully imprison persons, including CHARLES
13 SMALL, on an improper petition that unconstitutionally imprisoned
14 CHARLES SMALL and violated plaintiff CHARLES SMALL'S
15 constitutional rights.

16 28. As a result of the said wrongful conduct of the
17 defendants, and each of them, plaintiff CHARLES SMALL was still
18 wrongfully detained and wrongfully imprisoned for approximately
19 349 days.

20 29. As a further result of the wrongful conduct of the
21 defendants, and each of them, plaintiff was prevented from
22 continuing employment in the same capacity from being wrongfully
23 arrested, wrongfully detained, and wrongfully imprisoned, which
24 thus resulted in lost earnings and decreased work performance in
25 an economic amount which plaintiff will present according to
26 proof at trial.

PRAYER FOR DAMAGES

(Applicable to each cause of action for damages)

Plaintiff prays for judgment against defendants, and each of them, individually, and jointly and severally, as follows:

1. For general damages according to proof at time of trial;
2. For special damages, according to proof at time of trial;
3. For attorneys fees in an amount to be determined subsequent to trial (42 U.S.C. section 1988);
4. As against only the individual defendants, for punitive damages in an amount which this Court shall consider to be just and proper;
5. For costs of suit and for such other relief that the Court deems just and proper.

DATED: 4/30/09

RITTER & ASSOCIATES

By: 

DWIGHT F. RITTER, ESQ.
KAREN ALBENCE, ESQ.
Attorneys for Plaintiff
CHARLES SMALL

JS 44 (Rev. 12/07)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Charles Small

(b) County of Residence of First Listed Plaintiff San Diego
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Ritter & Associates 2550 Fifth Ave., 9th Fl. San Diego, CA 92103

DEFENDANTS

"See Attachment"

09 APR 30 PM 12:08

County of Residence of First Listed Defendant Riverside County
(IN U.S. PLAINTIFF CASES ONLY OF CALIFORNIA)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

09 CV

913 JM

DEPUTY
POR

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☒ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | | | |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

<input type="checkbox"/> 110 Insurance	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 362 Personal Injury - Med. Malpractice	<input type="checkbox"/> 610 Agriculture	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 365 Personal Injury - Product Liability	<input type="checkbox"/> 620 Other Food & Drug	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	<input type="checkbox"/> 820 Copyrights	<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 330 Federal Employers' Liability	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 630 Liquor Laws	<input type="checkbox"/> 830 Patent	<input type="checkbox"/> 450 Commerce
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 640 R.R. & Truck	<input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 650 Airline Regs.	<input type="checkbox"/> 861 HIA (1395ff)	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 660 Occupational Safety/Health	<input type="checkbox"/> 862 Black Lung (923)	<input type="checkbox"/> 480 Consumer Credit
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 355 Motor Vehicle Product Liability		<input type="checkbox"/> 690 Other	<input type="checkbox"/> 863 DIWC/DIWW (405(g))	<input type="checkbox"/> 490 Cable/Sat TV
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 360 Other Personal Injury		<input type="checkbox"/> 710 Fair Labor Standards Act	<input type="checkbox"/> 864 SSID Title XVI	<input type="checkbox"/> 810 Selective Service
<input type="checkbox"/> 190 Other Contract			<input type="checkbox"/> 720 Labor/Mgmt. Relations	<input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 850 Securities/Commodities/Exchange
<input type="checkbox"/> 195 Contract Product Liability			<input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act		<input type="checkbox"/> 875 Customer Challenge 12 USC 3410
<input type="checkbox"/> 196 Franchise			<input type="checkbox"/> 740 Railway Labor Act		<input type="checkbox"/> 890 Other Statutory Actions
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 510 Motions to Vacate Sentence	<input type="checkbox"/> 790 Other Labor Litigation	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)	<input type="checkbox"/> 891 Agricultural Acts
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 530 General	<input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 892 Economic Stabilization Act
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 443 Housing/Accommodations	<input type="checkbox"/> 535 Death Penalty			<input type="checkbox"/> 893 Environmental Matters
<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 444 Welfare	<input type="checkbox"/> 540 Mandamus & Other	<input type="checkbox"/> 462 Naturalization Application		<input type="checkbox"/> 894 Energy Allocation Act
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 445 Amer. w/Disabilities - Employment	<input type="checkbox"/> 550 Civil Rights	<input type="checkbox"/> 463 Habeas Corpus - Alien Detainee		<input type="checkbox"/> 895 Freedom of Information Act
<input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 446 Amer. w/Disabilities - Other	<input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 465 Other Immigration Actions		<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice
	<input checked="" type="checkbox"/> 440 Other Civil Rights				<input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation
- ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
42 U.S.C. Section 1983

Brief description of cause:
Violation of civil rights including false imprisonment

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$ 100,000.00

CHECK YES only if demanded in complaint:
JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

04/30/2009

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

000 274

AMOUNT

350

APPLYING IFP

JUDGE

MAG. JUDGE

4/30/09

cd

"Attachment"

MATTHEW MARTEL, as an individual, and as the Warden from the California Rehabilitation Center; GUILLERMINA HALL MURRAY, as an individual, and as the Warden from the California Rehabilitation Center; SHERIFF WILLIAM KOLENDER, as an individual, and on behalf of THE GEORGE BAILEY DETENTION FACILITY; BONNIE DUMANIS, as an individual, and DOES 1-50.

Court Name: USDC California Southern
Division: 3
Receipt Number: CAS000274
Cashier ID: sramirez
Transaction Date: 04/30/2009
Payer Name: DWIGHT RITTER

CIVIL FILING FEE
For: SMALL V. MARTEL, ET AL
Case/Party: D-CAS-3-09-CV-000913-001
Amount: \$350.00

CHECK
Check/Money Order Num: 6764
Amt Tendered: \$350.00

Total Due: \$350.00
Total Tendered: \$350.00
Change Amt: \$0.00

There will be a fee of \$45.00
charged for any returned check.